

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARMEN RESTO, on behalf of herself and
all others similarly situated,

Plaintiff,

COMPLAINT- CLASS ACTION-
JURY TRIAL DEMANDED

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC

Defendant.
-----X

BROWN, M. J.

Plaintiff by and through her counsel, The Law Offices of Shimshon Wexler, PC
amends his complaint as of right and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action to secure redress from unlawful credit and collection practices engaged in by the debt collector defendant Portfolio Recovery Associates, LLC ("PRA"). Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").

2. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt. 15 U.S.C. §§1692d, 1692e and 1692f.

JURISDICTION, VENUE AND PARTIES

3. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA).
4. Venue and personal jurisdiction in this District are proper because:

a. Defendant's collection communications were received by plaintiff within this District;

b. Defendant does business within this District.

5. Plaintiff, Carmen Resto, is an individual who resides in Nassau County, New York.

6. Defendant, Portfolio Recovery Associates, LLC ("PRA") is a Delaware foreign limited liability corporation with an address of 120 Corporate Blvd. Suite 100 in Norfolk, Virginia 23502.

7. PRA is engaged in the business of purchasing and collecting delinquent debts allegedly owed to others and is a debt collector as defined by the FDCPA.

8. According to its PRA's website, www.portfoliorecovery.com, as of 10/11/2012, PRA states "Our core business is the direct purchase of portfolios containing defaulted, consumer accounts, charged off from leading U.S. creditors".

9. Upon information and belief, PRA pays under ten cents on the dollar for these accounts.

10. PRA then tries to collect the full amount. The website goes on to say "If we are unsuccessful reaching customers directly by phone, we may use other collection techniques, including phone call campaigns, collection letters, in-house collection attorneys, or a network of third-party collection attorneys."

11. PRA is a debt collector as defined in the FDCPA.

FACTS

12. On or about January 21, 2012, plaintiff was sent the collection letter attached as Exhibit A, bearing the defendant's name.

13. In sending Exhibit A, defendant sought to collect a debt incurred for personal, family or household purposes, namely fees emanating from a personal credit card account.

14. Exhibit A is a standard form document.

15. More than 200 examples of Exhibit A have been sent out during the last 12 months.

16. Exhibit A is sent out with the knowledge and consent of the defendant.

17. Documents in the form represented by Exhibit A are regularly sent to collect delinquent debts.

18. Exhibit A provides a balance of \$877.22 and states "Interest continues to accrue on this account until the account is satisfied."

19. Upon information and belief, this sentence is intended to mislead consumers into believing that interest is accruing on their debt and they need to pay or the balance will continue to rise.

20. Upon information and belief, in fact interest was not accruing.

21. Letters dated 3/6/12 and 6/28/12, approximately 2 months and 6 months after the initial letter states that the balance is the same \$877.22. This suggests that interest is not accruing on this debt. See Exhibit B.

22. Upon information and belief, the letter dated January 21st, 2012 contained the false statement that "interest is accruing on this debt".

VIOLATIONS ALLEGED

23. Exhibit A violates 15 U.S.C. §1692, §1692e(10), §1692e(2)(a).

24. Section §1692e provides:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:...

(2) The false representation of—
(A) the character, amount, or legal status of any debt....

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt....

25. Defendant violated the above provisions of the statute because Exhibit A is deceptive, misleading and false.

26. Exhibit A indicates that interest is accruing on this debt when in reality it is not.

27. PRA is liable to the plaintiff for statutory damages pursuant to §1692k in an amount to be determined at trial.

CLASS ALLEGATIONS

28. Plaintiff brings this action on behalf of a class, pursuant to Federal Rules of Civil Procedure Rule 23(a) and 23(b) (3).

29. The class consists of (a) all individuals (b) with a New York address (c) who were sent a letter in the form represented by Exhibit A which showed that the original creditor is World Financial National Bank for a Mande credit card (d) when interest was not accruing on their account (e) and the letter nevertheless said that "Interest continues to accrue on this account until the account is satisfied." (f) on or after a date one year prior to the filing of this action.

30. The class is so numerous that joinder of all members is not practicable. On information and belief, there are at least 40 members of the class.

31. There are questions of law and fact common to the class, which common questions predominate over any questions relating to individual class members. The predominant common question is whether a letter conveying that interest is accruing when in fact interest is not accruing violates the FDCPA.

32. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

33. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.



34. A class action is superior for the fair and efficient adjudication of this matter, in that:

- a. individual actions are not economically feasible;
- b. Members of the class are likely to be unaware of their rights;
- c. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against the defendant for:

- (1) Statutory damages;
- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other and further relief as the Court deems proper.

Dated: New York, New York
October 11, 2012

By:  
Shimshon Wexler
The Law Offices of Shimshon Wexler, PC

Attorney for Plaintiff
PO Box 250870
New York, New York 10025
Tel: (212)760-2400
Fax: (917)512-6132
swexleresq@gmail.com

DEMAND FOR TRIAL BY JURY

Plaintiff requests trial by jury on all issues so triable.


Shimshon Wexler

NOTICE OF ASSIGNMENT

Please be advised that all rights relating to attorney's fees have been assigned to counsel.

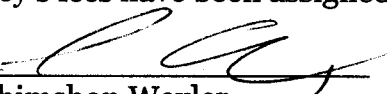

Shimshon Wexler

Exhibit A



Portfolio Recovery Associates, LLC

We're giving debt collection a good name.

January 21, 2012

Balance: \$877.22

Account/Reference No.: 5856379531921759

MANDEE

WORLD FINANCIAL NATIONAL BANK

www.portfoliorecovery.com

Welcome to Portfolio Recovery Associates!

Portfolio Recovery Associates purchased the account referenced above on 12/27/2011. Interest continues to accrue on this account until the account is satisfied. The stated balance includes interest as of the date of this letter. All future payments and correspondence for this account, including credit counseling service payments, should be directed to us.

Call toll-free at 1-800-772-1413 to discuss payment arrangements.

7:30 AM to 11 PM Mon.-Fri. 8 AM to 5 PM Sat., 2 PM to 9 PM Sun. (EST)

Contact us at help@portfoliorecovery.com to communicate with us by e-mail.

Various Payment Options Available Including:

| Pay by Phone: ☎ | Mail: ✉ | Online: 💻 |
|--|--|--|
| <ul style="list-style-type: none"> • Authorize automatic withdrawals from your bank account • Complete a debit card* payment | <ul style="list-style-type: none"> • Complete the attached coupon • Make all checks and payments to: Portfolio Recovery Associates, LLC P.O. Box 12914 Norfolk, VA 23541 | <ul style="list-style-type: none"> • Complete a payment from your checking account or debit card* • Pay online at: www.portfoliorecovery.com |

* See back for information about debit card transaction fees that may be applied by third party vendors.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor if different from the current creditor.

**This letter is from a debt collector and is an attempt to collect a debt.
Any information obtained will be used for that purpose.**

Notice: See Reverse Side for Important Information

*** PLEASE DETACH AND RETURN IN THE ENCLOSED ENVELOPE WITH YOUR PAYMENT ***

Dept 922
PO BOX 4115
Concord, CA 94524



Account/Reference Number: 5856379531921759

Payment Amount: _____

Address Service Requested

#BWNFTZF #PRA9993521412018#



CARMEN M RESTO
73 ROOSEVELT AVE APT 5
VALLEY STREAM NY 11581-1107

001
PORTFOLIO RECOVERY ASSOCIATES LLC.
P.O. Box 12914
Norfolk VA 23541

Exhibit B



Portfolio Recovery Associates, LLC

We're giving debt collection a good name.

WORLD FINANCIAL NATIONAL BANK
MANDEE

WORLD FINANCIAL NATIONAL BANK
Account/Reference No.: 5856379531921759
*Balance: \$877.22

March 6, 2012




Stretch Your Tax Refund Dollars!

*Make "Getting Out of Debt" your 2012 New Year's resolution.
We have created a solution just for you to make the most of your tax refund.*

| <u>Single Payment Settlement Option</u> | <u>3 Month Settlement Plan</u> | <u>12 Month Settlement Plan</u> |
|---|---|--|
| <ul style="list-style-type: none"> ● One payment of \$702.00 ● SAVE \$175.22 | <ul style="list-style-type: none"> ● Pay \$249.00 for 3 consecutive months ● SAVE \$130.22 | <ul style="list-style-type: none"> ● Pay \$66.00 for 12 consecutive months ● SAVE \$85.22 |

- Your first payment must be received **NO LATER** than **03/30/2012**.
- Your account will be considered "Settled in Full" after we post your final payment.

ARE YOU ELIGIBLE FOR A TAX CREDIT OR REFUND? Go to www.irs.gov to find out if you qualify for an earned income tax credit, free tax preparation, or one of the many tax credits available.

| | |
|---|--|
|  <p>We are ready to help you resolve this debt! Just call: 1-800-772-1413 before 03/30/2012 to discuss the AFFORDABLE PAYMENT OPTIONS that are available to you. 7:30 AM to 11 PM Mon.-Fri. ■ 8 AM to 5 PM Sat. ■ 2 PM to 9 PM Sun.</p> | |
|  <p>Mail all checks and payments to: PORTFOLIO RECOVERY ASSOCIATES, LLC P.O. Box 12914 Norfolk VA 23541</p> | <p>Make your Payment Online!</p>  <p>www.portfoliorecovery.com</p> |

**We are not obligated to renew this offer.*

Company Address: Portfolio Recovery Associates, LLC, 120 Corporate Blvd., Norfolk, VA 23502

Disputes Correspondence Address: 140 Corporate Blvd., Norfolk, VA 23502 or E-mail:
PRA_Disputes@portfoliorecovery.com

Debit Card Transaction Fees: Third party vendors may charge a transaction fee for processing payments made by debit card; however, PRA does not charge or accept any fees. Please discuss this option with our staff if you have any questions.

QUALITY SERVICE SPECIALISTS AVAILABLE Mon. – Fri. 8 AM TO 5 PM (EST)

Not happy with the way you were treated? Our company strives to provide professional and courteous service to all our customers. Contact one of our staff to discuss issues related to our quality of service to you by phone at (866) 925-7109 or by e-mail at qualityservice@portfoliorecovery.com.

PRIVACY NOTICE

We collect certain personal information about you from the following sources: (a) information we receive from you; (b) information about your transactions with our affiliates, others or us; (c) information we receive from consumer



Portfolio Recovery Associates, LLC
We're giving debt collection a good name.



WORLD FINANCIAL NATIONAL BANK
MANDEE
ORIGINAL CREDITOR: WORLD FINANCIAL NATIONAL BANK
Account/Reference No.: 5856379531921759
Balance: \$877.22

June 28, 2012

Warm Weather Cool Savings

| Settlement Options | Pay In Full Options |
|--|---|
| <ul style="list-style-type: none"> • Down Payment of \$65.00 • 1 Payment of \$549.00 • SAVE \$263.22 | <ul style="list-style-type: none"> • 1 Payment of \$877.22 NO LATER than 07/31/2012 |
| OR | OR |
| <ul style="list-style-type: none"> • Down Payment of \$45.00 • Pay \$102.00 for 6 consecutive months • SAVE \$220.22 | <ul style="list-style-type: none"> • Down Payment of \$45.00 • Pay \$138.70 for 8 consecutive months |
| OR | OR |
| <ul style="list-style-type: none"> • Down Payment of \$35.00 • Pay as little as \$9.00 for 12 consecutive months • SAVE \$170.22 | <ul style="list-style-type: none"> • Down Payment of \$35.00 • Pay as little as \$70.15 for 13 consecutive months |

Important Dates to Remember:

- Your down payment must be received by the date indicated above.
- Your first payment must be made by the date indicated above.
- Also:
- Your account will be closed after the final payment is received.
- Your account will be closed after the final payment is received.

Mail to:

Mail all checks and payments to:
Portfolio Recovery Associates, LLC
P.O. Box 4115
Concord, CA 94524

When you receive your mail, please:

1. Cut along the perforations to open the envelope.

2. Place the envelope in the provided box.

3. Seal the box with the provided tape.

4. Place the box in the provided box.

5. Place the box in the provided box.

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44. Place the box in the provided box.

*See Reverse Side For Easy Opening Instructions

Dept 922 6012741112069
PO Box 4115
Concord, CA 94524

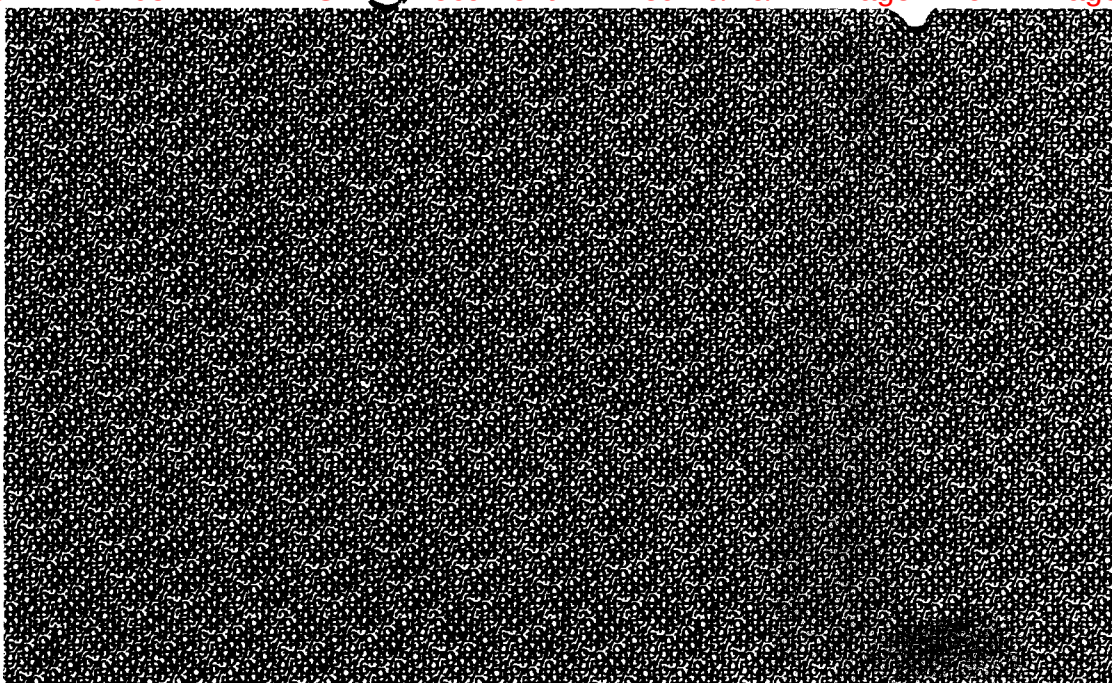


PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
CIS



Requested

#PRA6012741112069#

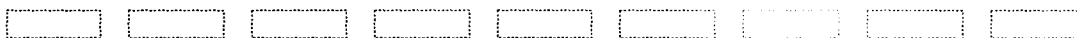


REMOVE BOTH SIDE STUBS FIRST
FOLD, CREASE AND REMOVE THIS STUB AT PERFORATION



FABOSP1 11581

CARMEN M RESTO
73 ROOSEVELT AVE APT 5
VALLEY STREAM NY 11581-1107



Because of the age of your debt, we will not sue you for it. If you do not pay the debt, we may report it to the credit reporting agencies as unpaid.

Quality Service Specialists available Mon. - Fri 8 AM to 5 PM (EST)

Not happy with the way you were treated? Our company strives to provide professional and courteous service to all our customers. Contact one of our staff to discuss issues related to our quality of service to you by phone at (866) 925-7109 or by email at qualityservice@portfoliorecovery.com

NOTICE: We are required under state law to notify consumers of the following rights. This list does not include a complete list of rights consumers have under state and federal laws:

NEW YORK CITY: City of New York License Numbers 1096994, 1394695, 1394697, 1394696, 1394698, 1394700, 1394699, 1394694.

